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ABSTRACT

The first thing migrant farmworkers require when they arrive at a new place is shelter. Traditionally, on-the-job housing has been provided by the grower or by a growers association or by a company which owns the crops; and traditionally the quality of such housing has varied greatly. Although Texas is the biggest exporter and user state of migrant labor in the country, Texas had done absolutely nothing to ensure that the housing provided these workers was minimally decent, until 6 years ago. This paper presents a history of the efforts which have been made to improve the quality of migrant farm labor housing within the State of Texas. This history necessarily includes developments on the national level. Topics discussed are: (1) the nature of migrant housing; (2) the Federal response during the Roosevelt, Truman, and Eisenhower administrations (1932-1960), the Kennedy and Johnson administrations (1961-1968), the first Nixon administration (1969-1972), and the second Nixon administration and the Ford administration (1973-1976); (3) the State of Texas response; and (4) legislation and programs affecting migrant labor housing in Texas today--the Department of Labor's Interstate Recruiting Service Code, the Occupational Safety and Health Act Code, the Farm Labor Contractor Registration Act, the FmHA Farm Labor Housing Program, the Texas Migrant Labor Camp Law, the Rural Housing Alliance, the Housing Assistance Council, and the Texas Housing Development Corporation. (NQ)

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MIGRANT FARMWORKER LABOR HOUSING IN TEXAS

Seminar Paper

David B. Winn

March 1, 1977

U.S. DEPARTMENT OF HEALTH, EDUCATION & WELFARE
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Dedicated to Ms. Ana Martinez of Fort Morgan, Colorado - who didn't know what to do, and got nothing done.

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In May, in Colorado, the sugar beet seed is already planted in the ground. When the crop is harvested, around July, it will be processed and in granule form provide much of the sugar eaten in America the next year. The seed is planted mechanically, after the field is mechanically cleared of weeds. But in May as the first green leaves of the plant appear, the weeds reappear alongside. So that the plant may grow, the weeds must be removed again. This "cleaning" is required usually twice, sometimes three times during the summer before the crop is ready to harvest. Since no machine yet has the subtlety to discern the difference between a beet and a weed, the work must be done by hand. Human hands must also "thin" the field when the plants are still young so that each will have room to grow. Most farms in this country are much too large for the farmer to do this work himself. He needs temporary help. Depending on the size of the farm, he may need many helpers but for only a few weeks at most. The local population may provide some temporary labor, but most often there are too few persons without permanent employment of their own. The farmer, then, must use workers who do not live in the area but who are willing to come to the area to work his field for the week or two or three necessary to save the crop. These workers are, of course, the migrant farmworkers, and in Colorado they are likely to be Texans who have packed their families in their cars and left their homes to find work. The first thing they require when they arrive at a new place is shelter.

PART I

I. INTRODUCTION

A. The Nature of Migrant Housing

The housing needs of the migrant farmworker fall into 3 categories: first, he must have a home to which he can return during the off-season winter months. California, Florida, and Texas are the "home-base" states for most migrants,[1] partly because winter crops can be grown there.[2] The migrant's obstacles in achieving decent home-base housing are basically no different from those encountered by any poor urban or rural homeowner or tenant. Second, the migrant often needs accommodations "in-transit" as he travels from his home to his destination, or as he travels from one job to the next. To date, the Migrant Farm Labor Center outside of Hope, Arkansas is one of the only facilities in the country designed specifically to serve the in-transit having needs of migrant farmworkers at prices they can afford.[3] Third, the migrant needs housing at his destination, the work site. It is with this uniquely "migrant" third category—on-the-job farm labor housing—that we are concerned in this paper.

1 L. RENO, PIECES AND SCRAPS: FARM LABOR HOUSING IN THE UNITED STATES 6 (1970) [hereinafter cited as L. RENO]. Almost half of the nation's farmworkers are from Texas. THE GOOD NEIGHBOR COMMISSION OF TEXAS, TEXAS MIGRANT LABOR - THE 1972 MIGRATION, Overview Chapter, at 1 (1973) [hereinafter cited as GOOD NEIGHBOR COMMISSION ANNUAL REPORT].

2 T. DUNBAR & L. KRAVITZ, HARD TRAVELING 4(1976) [hereinafter cited as DUNBAR & KRAVITZ].

3 Statement of Richard D. Ramsey, Manager, Migrant Farm Labor Center, at the State Conference on Migrant Affairs, Housing Workshop, in Austin, Texas, February 3, 1977.

Traditionally, on-the-job housing has been provided by the grower or by a growers association or by a company which owns the crops; and traditionally the quality of such housing has varied greatly. The migrant who arrived to work for an unknown employer might encounter anything from single unit farm houses or trailers located on the grower's land to large centrally located, multiple unit labor camps which provided housing for farmworkers working fields throughout the area. He might also arrive to find no housing at all or—hardly better—structures, even converted chicken coops, which were unsanitary, dangerous and degrading.[4] In that event, the migrant's choice was to either accept such living conditions or face the uncertainties of seeking other work. Often his lack of funds and the pressure of competition for jobs[5] denied him even this choice.

It is not the purpose of this paper to describe the conditions of farm labor housing. There exists already much material which forcefully details the poor quality of this housing in which migrants have been forced to live;[6] and by "poor housing" I mean overcrowded buildings with no partitions between the bedrooms, no window screens or windows, no cabinets for food, no heater, no indoor plumbing, no

4 Farmers in Texas have been known to provide chicken coops for their migrant employees. Interview with Troy Lowry, Sanitation Consultant with the Texas Migrant Camp Inspections Program, in Austin, Texas, November 21, 1976.

5 "It is generally true that no matter how dilapidated the labor camps may be there seems always to be someone needy enough (or 'illegal' enough) to move in and work the land." DUNBAR & KRAVITZ, supra note 2, at 80.

6 See generally L. SHOTWELL, THE HARVESTERS: THE STORY OF THE MIGRANT PEOPLE (1961); L. RENO, supra note 1; DUNBAR & KRAVITZ, supra note 2.

running water, walls insulated with newspaper, and exposed electrical wiring, often located so near the fields that the living quarters become contaminated by pesticides.[7] The need for better housing is undeniable and need not be proved again here.

Equally undeniable is the long neglect of such conditions by the public and the public's representatives.[8] As late as 1960, migrant labor housing remained a private matter between the grower or the growers association and the individual migrant; no Federal or, in Texas, state protection existed of any kind whatsoever.

It is the purpose of this paper to present a history of the efforts which have been made to improve the quality of migrant farm labor housing within the State of Texas. Such a history must necessarily include developments on the national level, as we shall see. Happily, the story is one of progress. With a clear understanding of what came before, the future of the struggle for decent farm labor housing should become clearer as well.

7 DUNBAR & KRAVITZ, supra note 2, at 79.

8 Migrants form a unique poverty class in this respect. Unseen by urban Americans, unnoticed by many rural Americans, their existence does seem to fit Woody Guthrie's description: "We come with the dust and we've gone with the wind." [from "Pasures of Plenty"]. Even in the countries that they call home, their absence for as long as 8 months of the year keeps them from developing political clout of their own. Migrant farmworkers receive no coverage under Workmen's Compensation, Unemployment Insurance, Temporary Disability Insurance, or the National Labor Relations Act (which guarantees the fundamental right to organize for almost all other American laborers). They receive minimal coverage under Social Security, Child Labor Laws, and Minimum Wage (including a lower wage rate not even applicable to all migrants, and no provisions for over-time). Migrant farmworkers have an average life expectancy of 41 years. Their occupational accident rate is 300% of the norm. HEARINGS ON H.R.12257 BEFORE THE SUBCOMMITTEE ON AGRICULTURAL LABOR OF THE SUBCOMMITTEE ON AGRICULTURAL LABOR OF THE COMMITTEE ON EDUCATION AND LABOR, 93d Cong.,2d Sess., at 12,13(1974). In 1969, their average annual income was $1,732 —of which $891 came from farm wage work. U.S. Dept. of Agriculture, Economic Research Service," The Hired Farm Working Force of 1969, A Statistical Report," Agricultural Economic Report No. 180, April 1970, Table 7, cited in L. RENO, supra, note 1, at 1. There are an estimated 830,000 migrant farmworkers harvesting the nation's crops each year, plus an unknown number of children. DUNBAR & KRAVITZ, supra note 2, at ix.

At this point, it may be instructive to note several general observations. First, the migrant life is a downtrodden one, but it need not be so. There is no disgrace in the work. Indeed, were the conditions better, many might find this invigorating and adventurous life style to their liking.

Second, migrant farmworkers are but one segment of the poor population in this country, and poor housing is but one of the problems facing migrants. On-the-job farm labor housing is a smaller category still. Obviously, here is one reason among others for the inadequate attention to the problem thus far; and here also one sees the magnitude of the task ahead.

Third, what little information exists on this highly specialized topic is often subjective, filled with the language of shame and righteous frustration. Real physical suffering combined with long years of neglect naturally produce such an attitude. But at some point—and regarding migrant labor housing that point is now—rhetoric must give way to data. Even some of the most basic information is still a matter of estimates and guesses.[9] This is a great frustration.

9 The number of farm labor housing units in Texas is unknown. In 1972, the National Migrant Information Clearinghouse of the Juarez-Lincoln Center in Austin took one step towards ascertaining this fundamentally important statistic by counting all the cotton gin camps in Texas. The authors concluded: "The current problem facing migrant researchers is that now data about either the objective conditions of migrants or existing programs is not available in a form that can be used to develop a strategy for solving migrant problems." JUAREZ-LINCOLN CENTER, NATIONAL MIGRANT INFORMATION CLEARINGHOUSE, MIGRANT PROGRAMS IN TEXAS; (1973). This statement comes from what is probably the best source of migrant information in the Southwest, certainly in the State of Texas.

B. The Problem in a Nutshell

The central fact to keep in mind is that no farmer is required to maintain housing for migrants. As an employer, his need is for workers, not tenants, and he can legally refuse to build new housing or burn existing units to the ground. This oftentimes is the only cheap housing in the country.. The delicate task is to convince the grower, force him or assist him to upgrade his housing without driving him to close the "camp" altogether.

Many farmers and farmers associations cannot afford the cost of housing construction or rehabilitation whether they would like to or not.[10] When occupancy is limited to short periods during the year, the cost per worker day is high. This is so whether we are speaking

10 The force of this argument is hotly contested. According to one commentator, addressing this closely related issue of wages: "Tax advantages, the lack of acreage limitations, government financial research and development, and the crop subsidies are only an example of how government has assisted the development of powerful, corporate conglomerates which have blanket control of American agriculture. Contrary to the growers' propaganda which sells the idea the family farmer cannot afford higher wages for his workers, most food workers are employed by big corporations. Absentee farm lords, led by their shareholders' drive for profit, have little concern for the social and economic needs of the people who are struggling to survive in rural America." Murphy, An End to American "Surfdom," 25 LAB.L.J.85(1974). The fact that 2/3 of the nation's bad housing is in rural areas and that migrant farmworkers live in the worst of it is often cited to stress the urgency of the farm labor housing problem. See, e.g., L. RENO, supra note 1, at 1. But this statistic should also serve to remind us that it has been only relatively recently in this country that the farmers themselves had such amenities as indoor plumbing in their homes. Nevertheless, it is equally true that "[a]lthough most farmers have kept pace by renovating and upgrading their own homes, there has been little voluntary improvement in worker housing by processors or growers since it is only human nature to not spend money unless forced to or unless there is a profit to be made." GOOD NEIGHBOR COMMISSION 1969 REPORT, supra note 1, Housing Chapter, at 10.

of a single unit on his land or a growers association operating a central camp. The costs involved are not limited to the initial investment; maintenance costs can be very expensive, especially when migrant occupants and their children do not take care of the property.[11] Spiraling interest rates naturally inhibit grower enthusiasm. Furthermore, progress in farm mechanization and herbicides has drastically reduced the need for migrants in many crops. This trend is certain to continue.[12] Many farmers take the position that it makes no sense to spend substantial sums for housing which will stand unused in just a few years.

On the other hand, many of these farmers will in fact be using migrant labor for many years to come and there are compelling reasons for them to maintain decent housing. Good housing ensures that he will have workers each year and that a good worker one year will return the next. Bad housing certainly promotes bad health and bad health arguably decreases the efficiency of the workers.[13] The migrant himself places a high value on the quality of labor housing[14] which is the interest of good relations the grower should not ignore.

11 For example, the Plainview Camp in Hale County, Texas, spent over $20,000 in 1972 alone to repair damage caused by occupants and vandals. GOOD NEIGHBOR COMMISSION 1972 REPORT, supra note 1, Housing Chapter, at 15.

12 GOOD NEIGHBOR COMMISSION 1971 REPORT, supra note 1, Trends Chapter at 7.

13 A study published in 1969 by the Washington State Council of Churches concluded that substandard housing in migrant camps in Washington clearly contributed to poor migrant health. GENERAL ACCOUNTING OFFICE REPORT TO THE CONGRESS, IMPACT OF FEDERAL PROGRAMS TO IMPROVE LIVING CONDITIONS OF MIGRANT AND OTHER SEASONAL FARMWORKERS 22 (1973) [hereinafter cited as GAO REPORT].

14 In a 1968 survey of migrants, housing ranked second only to wages in importance. 1/4 of all single men and 1/3 of all married men ranked it first. U.S. DEP'T OF LABOR, HOUSING FOR MIGRANT FARMWORKERS, FARM LABOR DEVELOPMENT 13 (1968).

The task of improving migrant farm labor housing, then, is a complex one. The grower cannot and will not bear the burden alone. The experience of the past argues against this solution. The migrant himself—unorganized, itinerate, working often from sunup to sundown for subsistence wages—is uniquely unable to bring about substantial change by himself. The interstate migration of farmworkers is clearly a matter of federal concern. Each state has no less an obligation to ensure the welfare of its residents. In the past few years, both the federal government and the State of Texas have finally acknowledged the existence of the problem and their obligation to help remedy it. The response that has developed, piecemeal over the years, has been basically two-fold: 1) set a certain minimum legal standard and 2) provide the means (i.e., financial assistance) by which the grower may comply.

II. THE FEDERAL RESPONSE—A HISTORY

A. 1932 - 1960 - The Roosevelt, Truman, and Eisenhower Administrations

Federal involvement in the nation's housing industry began in the early 1930's in response to the desperation of the Great Depression.[15] The migrant farmworkers of this period were often uprooted poor white families—the dustbowl migrants portrayed in John Steinbeck's Grapes of Wrath and in the songs of Woody Guthrie. The Depression hit these families hard and among the first housing programs initiated by the Federal Government was the Farm Security Administration.[16] From 1937 to the end of World War II, the Farm Security Administration built labor camps for migrant farmworkers which once held a total of 19,464 families.[17]

The years just before and finally overwhelmed by the Second World War were years of profound change in American society, and in migrant life as well. The exodus of rural Americans to urban centers and the consolidation of small farms into large agribusinesses meant that lower numbers of local population were available to meet a higher grower demand for cheap seasonal labor. In the 1940's the number of migrants (and the consequent need for even more decent farm labor housing) began a steady rise which did not peak until the 1960's,

15 REPORT OF THE UNITED STATES COMMISSION ON CIVIL RIGHTS, TWENTY YEARS AFTER BROWN: EQUAL OPPORTUNITY IN HOUSING 14 (1975) [hereinafter cited as CIVIL RIGHTS COMMISSION REPORT].

16 Originally the Resettlement Administration, created by executive orders in 1935, this was later incorporated into the Bankhead—Jones Farm Tenant Act, 50 Stat.522(1937),7 USC §§1000-29(1958), as the Farm Security Administration. Comment, Laws and Legislation Providing for the Housing of Migrant Agricultural Workers, 6 WILLIAMETTE L.J. 111 at 124(1970).

17 DUNBAR & KRAVITZ, supra note 2, at 82.

when farm mechanization and other factors[18] caused a decline that continues to this day.[19] The manpower shortage of World War II began what has been called the "pivotal period in farm labor":[20]

> When existing farm labor in all parts of the country was drawn into war industry and into the Armed Forces, it was replaced by the Mexican Americans who were unquestionably suited for farm work by their rural traditions and culture but who were unqualified for industry because of language difficulty, discrimination, and lack of skills.[21]

White Americans escaped the migrant stream just as the demand began to rise.

The number of decent farm labor housing units did not rise. The Farm Security Administration had been a response by the Congress to a clearly perceived emergency—the Depression. After World War II, America entered a new era of great prosperity and the emergency was perceived to be over. It was not. Migrant housing needs, on the increase, were forgotten during the 40's and 50's or ignored. It was a "minority" matter now and most Americans, more comfortable than they had been for many years, were preoccupied with affairs overseas. It was during this period that the disparity between migrant labor protection and the protections afforded other American labor groups grew.[22] Migrants, after the brief flurry of romantic attention during the 1930's, sank beneath the nation's prosperity like a stone.

18 Including new chemical pesticides, price competition from imported fruits and vegetables produced in countries where manual labor is less costly, and horticultural development of new strains that can better tolerate machine handling. GOOD NEIGHBOR COMMISSION 1975 REPORT, supra note 1, at 40.

19 GOOD NEIGHBOR COMMISSION 1971 REPORT, supra note 1, Overview Chapter, at 3.

20 GOOD NEIGHBOR COMMISSION 1969 REPORT, supra note 1, Overview Chapter, at 1.

21 GOOD NEIGHBOR COMMISSION 1971 REPORT, supra note 1, Overview Chapter, at 1.

22 See supra note 8.

In 1946, Congress officially dismantled the Farm Security Administration and ordered all camps closed or sold.[23] 3 years later, Congress enacted the first comprehensive housing and community development legislation—the Housing Act of 1949[24]—which declared the nation's commitment to provide a decent home and a suitable living environment for every American family."[25] The Farmer Home Administration (FmHA)—which today has a central role in the struggle for decent farm labor housing—was created by the Act, but migrant housing needs were not even acknowledged. In 1956, Congress finally gave away what old Farm Security Administration camps remained unsold.[26] In 1955 and 1957, bills were proposed but not enacted to establish Federal labor camps.[27] The quality of migrant farm labor housing was left solely to the whim and fortune of the grower.

B. 1961 - 1968 - The Kennedy and Johnson Administrations

The civil rights movement redirected the attention of the nation to the needs of the poor. In 1961, under a new Administration, the Federal Government reentered the field of migrant farm labor housing by creating the §514 Farm Labor Housing Loan Program.[28] An amendment to the Housing Act of 1949, §514 provided for the construction and

23 DUNBAR & KRAVITZ, supra note 2, at 82.
24 Housing Act of 1949, 63 Stat.413, as amended (codified in scattered sections of 12,42 USC(1970)).
25 Housing Act of 1949,42 USC §1441(1970).
26 L. RENO, supra note 1, at 44.
27 H.R.4211,S.1536,84th Cong.,1st Sess.(1955); and H.R.1247,86th Cong., 1st Sess.(1957).
28 Housing Act of 1949, as amended, §514,42 USC §1484(1961).

modernization of farm labor housing by means of loans insured by the Farmer Home Administration (FmHA). The loans were to be repaid at an interest rate of 5%. The theory of §514 loans was that the government, rather than build labor housing itself, would facilitate assistance from the private sector.

In 1963 and 1964, legislation was proposed but not enacted to provide a tax incentive for farmers who constructed new farm labor housing.[29]

In 1964, President Johnson declared war on poverty in America. The Office of Economic Opportunity (OEO) was created by the Economic Opportunity Act of 1964.[30] Between 1965 and 1973, when OEO was dismantled, OEO's Migrant and Seasonal Farmworkers Division built some 2200 temporary farm labor units in California, but the project was abandoned early on when OEO realized how expensive on-going maintenance costs for labor housing can be.[31]

In that same year, the Housing Act of 1949 was again amended, this time to provide for the creation of the §516 Farm Labor Housing Program.[32] Direct grants administered by the FmHA became available to interested groups for use in constructing or upgrading migrant housing. The grants could cover as much as 2/3 of the total costs; the remaining 1/3 could be financed through §514 insured loans.

29 Comment, Laws and Legislation Providing for the Housing of Migrant Agricultural Workers, 6 WILLIAMETTE L.J. 111, at 124(1970).
30 Economic Opportunity Act of 1964, 42 USC §2701 et.seq.(1964).
31 DUNBAR & KRAVITZ, supra note 2, at 85.
32 Housing Act of 1949, as amended §516,42 USC §1486(1964).

In 1965, the nation's housing needs were acknowledged by the creation of a new cabinet level department, the Department of Housing and Urban Development (HUD).[33] HUD, however, was then and remains an agency dedicated to the nation's urban housing needs. The FmHA, which is generally responsible for the nation's rural housing, was not transferred to HUD, but remained a division of the Department of Agriculture.

In 1967 came what was hailed by many observers at the time[34] to be a major achievement on the road to better migrant housing. The Department of Labor (DOL) established a labor housing code compliance with which became a precondition to use by growers of the Department's Interstate Recruiting Service.[35] Thus before a local office (for example, in Texas, the Texas Employment Commission) could refer migrant workers interstate to a grower, the grower was required to show that the housing he provided met the minimal standards of habitability

33 Despite the need, the United States continues to spend the smallest percentage of its gross national product (GNP) for direct housing subsidies of any western industrialized nation. Housing the Urban Poor, Arthur P. Solomon, Boston: Massachusetts Institute of Technology Press, 1974. According to Solomon, the U.S. spends 3.2% of its GNP; France, 6.9%; Belgium, 5.7%; West Germany, 5 4%. Cited in CIVIL RIGHTS COMMISSION REPORT, supra note 15 at 33. A budgetary comparison from the years 1962-1967 reveals that the U.S. spent 356.3 billion dollars for national defense, $33.2 billion for stabilizing farm prices and incomes, $24.2 billion for space exploration, $22.2 billion for Federal highway construction, but only $8.1 billion for all housing subsidies. Id., at 22.

34 See Braun, Housing of Migrant Agricultural Workers, 46 TEXAS L.REV. 933, at 942(1968); and comment, Laws and Legislation Providing for the Housing of Migrant Agricultural Workers, 6 WILLIAMETTE L.J. 111, at 126(1970).

35 20 CFR §620(1967). Authority for the code comes under 48 Stat.117, as amended, 29 USC 48K.

set forth. This was the first attempt on the national level to force reluctant growers to upgrade their housing. It failed miserably, as we shall see later.

In 1968, the Housing and Urban Development Act of 1968[36] was enacted. It called for the production or rehabilitation of 26 million housing units by 1978, including 6 million for low and moderate income families. Although migrant labor housing needs were not mentioned, this was the first time a national housing goal was set in terms of housing units to be produced within a specified number of years.[37] The Act committed in a definite manner the Administration thd the Congress to actually meet the housing needs of the nation's poor. Unfortunately for them, President Johnson was not reelected and the Congress found itself embroiled in a more deadly national commitment—the Vietnam War.[38]

C. 1969 - 1972 - The First Nixon Administration

Although several important gains for decent farm labor housing were made during the Nixon years, the gains were often achieved in spite of, rather than under, the leadership of the Administration. President Nixon, beset with an ailing economy and a war that he could not end, clearly lacked the sensibility of his predecessors to migrant housing needs. The growing battle between the executive and the legislative branches of government was joined on many levels, and migran housing was one of the wounded.

36 Housing and Urban Development Act of 1968, 82 Stat. 476 (codified in scattered sections of 5,12,15,18,20,31,38,40,42,49 USC (1970)).

37 CIVIL RIGHTS COMMISSION REPORT, supra note 15, at 22.

38 The ambitious goals of the Act were never attained. In 1975, the U.S. Commission on Civil Rights was forced to report: "Without doubt, the U.S. has abandoned the commitment made in 1968 to meet lower-income housing needs within the current decade. Id., at 38.

In 1970, key changes were made by Congress in the §514 Loans—§516 grants FmHA Farm Labor Housing Program. The Committee Report stated:

> The Committee recognizes that financing farm labor housing is a difficult form of credit administration, particularly where the loan is to be repaid out of rental charges to the tenants. Rents must be held at low levels. Occupancy is seasonal or intermittent and the margin between income and debt servicing is so narrow that the borrower often has difficulty in meeting loan payments.[39]

To make the terms of the program more practical, and so achieve better results, the interest rate on §514 loans was reduced from 5% to 1% and the maximum coverage of §516 grants was extended from 2/3 to 90% of the total construction costs.

In the same year, Congress passed the Occupational Safety and Health Act of 1970, which created the Occupational Safety and Healty Administration (OSHA) within the Department of Labor.[40] The Act authorized a new federal labor housing code by its terms applicable to all labor housing in the country.[41] OSHA was empowered to make periodic inspections and to issue fines for non-compliance.

D. 1973 - 1976 - The Second Nixon Administration and the Ford Administration

President Nixon's election to a second term freed his hand politically in the administration of the government. He moved quickly.

39 3 U.S. CONG. & ADMIN. NEWS 5609, House Report No. 91-1556, 91st Cong., 2d Sess., 1970.

40 Occupational Safety and Health Act of 1970, 29 USC §§651 et seq.(1970).

41 The regulations are set forth at 29 CFR §1910.142(1970).

In January, he imposed a spending moratorium on practically all federally subsidized housing programs, including the §§514-516 FmHA Farm Labor Housing Program.[42] His purpose was to "freeze" funding until a study could be made as to the effectiveness of existing programs, with a mind towards reorganization.[43] The reaction across the land was intense.[44] Migrant housing advocates went to the courts. Funding for §514 and §516 was finally restored, and the program brought back to life, in February of 1974 as the result of a Consent Decree in United Farm Workers of Florida Housing Project v. Farmer Home Administration.[45] Its "life" however was a precarious thing; in the annual budget proposals submitted to Congress from 1973 on, the Nixon Administration requested zero funding for migrant labor housing grants and loans.[46] What money was provided came from Congress against the President's request.

The Office of Economic Opportunity was dismembered in 1973 and its parts were scattered throughout the Federal bureaucracy. The Migrant and Seasonal Farmworker Division landed in the Department of Labor. By this time, however, the Migrant Division was no longer involved with farm labor housing. It was felt that what housing money they had was better spent by providing permanent housing for the

42 DUNBAR & KRAVITZ, supra note 2, at 82.

43 CIVIL RIGHTS COMMISSION REPORT, supra note 15, at 25.

44 Congress itself expressed its displeasure by passing the Impoundment Control Act of 1974. 31 USC §§665,1400 et seq.(1974). The Act prohibits unilateral Executive impoundments by requiring prior Congressional approval.

45 No.89-74(D.D.C.Feb.26,1974).

46 HOUSING ASSISTANCE COUNCIL INFORMATION PAMPHLET, THE FISCAL 1976 BUDGET (1975)(on file at the Juzrez-Lincoln Center, National Migrant Information Clearinghouse Library in Austin, Texas).

migrant at home-base.[47]

Also in 1973, the General Accounting Office released its Report to the Congress entitled "The Impact of Federal Programs to Improve Living Conditions of Migrant and Other Seasonal Farmworkers." Regarding labor housing, the Report concluded:

> In each of the six areas [studied in depth], there was a shortage of low cost, safe, decent, and sanitary housing for migrant and other seasonal farmworkers and few houses were being constructed for them.[48]

Congress and the Administration finally agreed on a new housing policy in the Housing and Community Development Act of 1974. Of particular interest to migrants was the creation of a new FmHA Farm Labor Housing Program, §521 Rent Supplements for Rural Rental and Farm Labor Housing.[49] §521 Rent Supplements are payments by the government to rental housing owners; the government pays all migrant rental costs which exceed 25% of his adjusted family income. A good idea, §521 Rent Supplements has never been implemented.

In that same year, the Farm Labor Contractor Registration Act of 1963[50] was amended to require that crew leaders (who are often the middlemen putting growers in contact with workers) file a statement

47 "Temporary housing on the other hand has meager ancillary benefits. It eases somewhat the burden of migrancy but does not deal with the farmworkers' root problems. It does not improve his financial position in society, nor upgrade his job skills, nor better his children's prospects for a good life. When the farmworker leaves his temporary unit after a few weeks or months to resume his migrant trek he really is no closer to attaining a decent life than when he left his home base area." CAO REPORT, supra note 13, at 116.

48 Id., at 3.

49 HOUSING ASSISTANCE COUNCIL INFORMATION PAMPHLET, THE FISCAL 1976 BUDGET 1 (1975) (on file at the Juarez-Lincoln Center, National Migrant Information Clearinghouse Library in Austin, Texas).

50 Farm Labor Contractor Registration Act of 1963, as amended, 7 USC§2041 et seq. (1974).

with the Department of Labor that the housing which is to be provided their crews meets applicable Federal and state standards for safety and health.[51] Although aggrieved migrants were given an express right of action for actual damages or $500 for each violation or other equitable relief,[52] there are no reported cases specifically granting recovery for substandard housing.

Also in 1974, OSHA published a proposed new set of regulations regarding migrant labor housing standards. It was felt with some justification that the existence of two housing standards within the Department of Labor—that applied by the Interstate Recruiting Service and that applied by OSHA—was unnecessary. The purpose of the new proposed regulations was to supplant both prior federal standards. Unfortunately, the proposed regulations were a much watered down version of the originals.[53] Hearings were held across the nation. The response was so uniformly opposed that the proposal was dropped.[54] OSHA will try again with a new proposal sometime later this year (1977).[55]

51 Id., 7 USC §2044(a)(4)(1974).

52 Id., 7 USC §2050a(a)(b)(1974).

53 "Under OSHA's proposed standards, labor camp ceilings can be less than 7 feet high, beds can be less than 36 inches apart, dwellings can be within 500 feet of livestock pens, and living quarters need have neither electricity nor windows . . . . worst of all, unless the workers are forced to live in the farmers' houses as a condition of employment, the standards will not apply . . . About the only positive aspects of the proposed standards are that pesticides may not be stored in living areas, and that fifty-square feet of space must be provided for each person in the sleeping quarters." DUNBAR & KRAVITZ, supra note 2, at 81.

54 Id.

55 Interview with Troy Lowry, Sanitation Consultant with the Texas Migrant Camp Inspections Program, in Austin, Texas, February 3, 1977.

1974 was also the year that President Ford succeeded President Nixon. During the Nixon years, and particularly during the second term, proponents of better housing for migrants had been forced into a role of opposition to the Administration. Any hopes that the struggle would receive a more enthusiastic response from the White House under Ford were misplaced. President Ford seemed to understand migrants and their needs about as well as he understood how to eat tamales. Following the precedent set by President Nixon, the Ford Administration's annual budget proposals to Congress included zero funding for migrant labor housing programs up to and including Fiscal Year 1977.[56]

56 RURAL HOUSING ALLIANCE INFORMATION PAMPHLET, 1977 RURAL HOUSING BUDGET (1976).

III. THE STATE OF TEXAS RESPONSE—A HISTORY

Texas is the biggest exporter state of migrant labor in the country.[57] Texas is also one of the biggest user states.[58] Migrant farmworkers help Texas to bring in about 5.6 billion dollars a year in agriculture.[59] The state ranks behind only Iowa and California in total agricultural income.[60] Until 6 years ago, Texas did absolutely nothing to ensure that the housing provided these workers was minimally decent.

Politically, farm labor housing was never much of an issue in this State. From the end of World War II to 1965 many of the migrant workers in Texas were Mexican citizens who were able to cross the border with work permits under the Bracero Program.[61] Between Texas growers and Mexican workers, the State Legislature's concern was for the growers.

The termination of the Bracero Program in 1965 had a significant effect on the nature of Texas' farm labor housing needs. The braceros most often had been single men, and their housing was typically in the style of barracks. When the border was closed to alien labor, their place was taken by native Texans, whose housing needs were very different from the braceros. Texas migrants often travel with their entire families. This way the family is able to stay together all year and, with children working the fields alongside their parents,

57 GOOD NEIGHBOR COMMISSION 1972 REPORT, supra note 1, Overview Chapter, at 1.
58 L. RENO, supra note 1, at 6.
59 DUNBAR & KRAVITZ, supra note 2, at 23.
60 Id.
61 GOOD NEIGHBOR COMMISSION 1969 REPORT, supra note 1, Overview Chapter, at 1.

more money can be earned. The old bracero barracks were obviously unsuitable for housing these families. Thus when increased numbers of native Texans began migrating across the State, the preexisting shortage of decent units was exacerbated by this change in housing needs.

In 1959, 1961, 1963, and 1967 bills were proposed but not enacted to establish a State labor housing code.[62] By 1971, 32 other states—most employing far less migrants than Texas—had labor housing codes in effect.[63] In that year, the Texas Legislature finally enacted the Migrant Labor Camp Law.[64] The Code required licensing of all labor housing which provided living quarters for 15 or more migrant agricultural workers for more than 3 days. Failure to obtain a license and comply with the standards was subject to a penalty of fines and/or imprisonment; in addition, suit could be brought to close the housing altogether. The responsibility for enforcing the Code was given to the State Department of Health Resources.

In 1975, the Code was amended to remedy major shortcomings in the original. Coverage was extended to all labor housing in the State which provides living quarters for 3 migrants or 2 migrant families for more than 3 days.[65] This change forced legal responsibility for

62 GOOD NEIGHBOR COMMISSION 1966 REPORT, supra note 1, Overview Chapter, at 9.

63 M. Scanio, Housing and the Migrant Farmworker (unpaginated) (1973) (unpublished term paper on file at the Juarez-Lincoln Center, National Migrant Information Clearinghouse Library in Austin, Texas).

64 TEX.REV.CIV.STAT.ANN., at 5221e-1(Supp.1975).

65 Id., §1(Supp.1975).

the quality of labor housing upon all but the smallest farm operations in the State. The definition of "migrant agricultural worker" was amended from "an individual who is employed in agriculture . . ." to "an individual working . . . in agricultural or related industry . . ."[66] This change rendered moot the argument of the Texas cotton ginners that migrants working in cotton gins are not agricultural workers and that therefore the housing provided them was not covered by the Code. With the amendments of 1975, the long battle for a good labor housing code was won. The problem now became one of enforcement.

Also in 1975, a bill was proposed but not enacted that would have provided for funding assistance by the state. Fashioned after a plan already in effect in Michigan, the bill would have authorized the state to make labor housing grants of up to $20,000 per grant.[67]

66 Id.

67 S.B.483; H.B. 1559 discussed in GOOD NEIGHBOR COMMISSION 1975 REPORT, supra note 1, at 62,63.

IV. LEGISLATION AND PROGRAMS AFFECTING MIGRANT LABOR HOUSING IN TEXAS TODAY—A CLOSER LOOK

Migrant labor housing in Texas today is regulated by 3 distinct housing codes—2 federal, and one state. One is ineffective, another is inadequately enforced; the third, the Texas code, is the key to eliminating bad labor housing in Texas. The only economic assistance available to the grower forced to comply comes from the Federal Government through the Farmers Home Administration, and occasionally from HU In addition to these efforts from government, a number of non-profit organizations have been incorporated in the past few years for the purpose of working to better the quality of housing in the nation's rural areas.

A. The Department of Labor—Interstate Recruiting Service Code

When the Department of Labor (DOL) in 1967 added a decent housing condition to use by the growers of its interstate employment referral service, the thought was that the growers would be forced to comply. This has not been the result. Nationally, the effect has been, not to improve the condition of migrant housing significantl but rather to take DOL out of the business of agricultural manpower referral. Referral of Texas migrants by the Texas Employment Commission (TEC), for example, has shot straight down since the year the Code went into effect:

	Openings	Placements	Percentage
1969	67,500	44,500	66
1970	50,000	31,000	62
1971	27,500	17,500	63
1972	22,000	13,600	62
1973	18,900	10,500	56
1974	23,926	8,083	34
1975	17,892	7,363	41 [68]

The dramatic decline should be read to indicate the great number of growers across the nation who have not raised the quality of their migrant housing to meet these standards, and who will not as long as there is another way out. Growers simply stopped using the service and obtained their workers by other means.[69]

Apart from this inability of the Code to even reach most migrant housing, the Department of Labor was not enforcing it against the growers who did continue to use the service. In 1974, suit was brought against DOL to enjoin further discriminatory treatment of migrant and seasonal farmworkers. One effect of this case, NAACP v. Brennan,[70] in Texas was that the Texas Employment Commission agreed to use the State Department of Health Resources as its enforcement arm.[71] In

68 Id., at 43.

69 Adding the housing requirements in some respects worsened the condition of migrant life. By forcing the grower to contact migrant workers for the coming season through private channels, it has forced the migrant into the more uncertain and vulnerable position of relying on the farm labor contractor as middleman.

70 360 F.Supp.1006(1974).

71 Interview with Troy Lowry, Sanitation Consultant with the Texas Migrant Camp Inspection Program, in Austin, Texas, November 21, 1976.

another case, Gomez v. Florida State Employment Service, the statute was held to grant an implied right of action to migrants themselves who have been referred to substandard housing.[72]

In Texas, the Texas Employment Commission makes both in-state and out-of-state referrals, but the housing standard applies only to interstate referrals. Since Texas growers rarely need to go out of state to find migrants, the effect of the Code here has been especially slight. Advocates of the Code argue that the requirement should apply to purely intrastate referrals too.[73] Critics argue that such action would only take TEC out of the migrant referral service altogether.[74]

B. The OSHA Code

The Occupational Safety and Health Act is at its heart a revenue sharing plan. Much like the Department of Labor' Interstate Recruiting Service, the Federal government creates the program with the provision that the states may assume responsibility for enforcing the regulations (or similar ones) by submitting a "state plan" for approval by the Secretary of Labor.[75] If the State plan is approved, the Secretary is authorized to provide grants up to 50% of the total cost of the program.[76] Texas has never taken advantage of this

72 417 F 2d 569(5th Cir.1969). The decision of the court begins: "Remarkable as it may seem in this litigation prone world, this is the premier case brought under a statute thirty-six years old. This case raises for the first time the question of whether under the Wagner-Peysner Act of 1933 and the regulations promulgated by the Secretary of Labor pursuant to that Act migratory farm workers who accept work through the employment system set up by the Act and regulations have rights and remedies for violations." The court held that a cause of action existed against not only the Service, but against the county sanitarian and the employer as well.

73 Brann, Housing of Migrant Agricultural Workers, 46 TEXAS L.REV.933,at 943(1968).

74 The Good Neighbor Commission of Texas concluded as early as 1969 that "Labor's action was not as prudent as it was thought to be." GOOD NEIGHBOR COMMISSION 1969 REPORT, supra note 1, at 11.

75 Occupational Safety and Health Act of 1970, §18,29 USC§667(1970).

76 Id., §23,29 USC §672(1970).

opportunity, although other states have.[77]

The OSHA Temporary Labor Camp Standard has the potential to be a very effective tool in eliminating bad labor housing since by the terms of the statute coverage extends to every labor housing unit in the country. However, at least since October of 1976, Congress in appropriating funds for OSHA's operation has attached a rider restricting inspections to farms which employ 11 or more employees on any given day within the last 12 months; and no civil penalties can be imposed unless the establishment has been cited for 10 or more violations.[78] Also, until NAACP v. Brennan in 1974, OSHA had a published policy of not enforcing the Code. OSHA Field Offices were instructed not to inspect a labor camp unless they received a complaint.[79] Very few migrants will risk losing their jobs by filing a complaint against their employer.

Apart from all that, OSHA's inspection staff is far too small to adequately enforce the standards. In Texas, for example, OSHA has 6 regional offices. In the Lubbock area, there are an estimated 150 gin camps and 5 compliance officers whose duties include other matters than just inspecting labor camps. During the past gin season, the Lubbock area office inspected 38 camps a majority of which were not in compliance. The Area Director asserts that there is simply not enough staff to inspect all the camps.[80]

77 For example, Colorado passed the Colorado Occupational Safety and Health Act in 1973. COL.REV.STAT. §8-1-010 et seq.(1973).

78 42 Fed.Reg.5356(1977).

79 Guide, Occupational Safety and Health Protection for Farmworkers, 8 CLEARINGHOUSE REV.548(1974).

80 Telephone interview with Raymond D. Layne, OSHA Area Director for the Lubbock area, February 21, 1977.

Recently the OSHA inspection procedure has encountered further difficulties. The statute provides that OSHA officers, upon presenting appropriate credentials to the owner, are authorized to enter without delay and inspect the premises at any reasonable time.[81] Three federal district courts sitting in three-member panels have issued decisions on whether this provision for warrantless inspections violates the Fourth Amendment protection against search and seizure without probable cause. The first case, Brennan v. Buckeye Industries, Inc.,[82] held that warrantless inspections by OSHA are constitutional since the demands of administrative efficiency and governmental interest are compelling. The second case, Brennan v. Gibson's Products Inc., of Plano,[83] held that warrantless searches over an owner's objection are unconstitutional; the Act itself, however, was found to be constitutional by construing it to require a search warrant whenever an owner objects to an inspection. In this third case, Brennan v. Barlow's, Inc.,[84] the court refused to read into the statute what Congress did not plainly prescribe and held the Act unconstitutional. OSHA was enjoined from conducting inspections without first obtaining a search warrant upon a showing of probable cause. In February of 1977, Justice Rehnquist issued a stay on the injunction until this far reaching matter can be considered on appeal.[85]

81 Occupational Safety and Health Act of 1970, 29 USC §657(a)(1970).
82 374 F.Supp.1350(S.D.Ga.1974).
83 407.F.Supp.154(E.D.Texas 1976).
84 45 USLW 2317(Court Decisions—Agency Rulings, Jan.11,1977).
85 45 USLW 3517 (Supreme Court Proceedings, Feb. 1, 1977).

Attempts thus far to find an implied right of action in the statute for individual employees have failed.[86]

C. The Farm Labor Contractor Registration Act

The 1974 amendments require crew leaders who for a fee recruit or transport migrant workers to, inter alia, file a statement with the Department of Labor that the housing to be provided their crews meet federal and state housing standards.[87] Migrants are given an express right of action for actual damages or for $500 per violation or for other equitable relief.[88] There are several shortcomings and loopholes in the statute which diminish its effect: first of all, many migrants do not use crew leaders to find work; more particularly, the statute's good housing requirement applies only to housing which the crew leader owns or controls. Thus if the crew leader is a migrant himself, as is often the case, the requirement will rarely apply. However, growers associations and agribusinesses occasionally fall within the definition of "farm labor contractor" and they do oftentimes own or control the housing provided. Under these circumstances the statute may be of some potential benefit. Of course the migrant who brings suit against his employer can expect to be blacklisted in that area as a "troublemaker" from then on. As stated earlier, there are no reported cases for violations of this good housing requirement.

86 Russell v. Bartley, 494 F 2d 334(CA Ky 1974); Jeter v. St. Regis Paper Co., 505 F 2d 973(CA Miss 1975); Pawvor v. Texaco, Inc., 387 F.Supp.626(D C.Texas 1975).

87. Farm Labor Contractor Registration Act of 1963, as amended, 7 USC §2044(a)(4)(1974).

88 Id., 7 USC §2050a(a)(b)(1974).

D. The FmHA Farm Labor Housing Program—§§514,516 and 521

§514 Farm Labor Housing Loans are available today at 1% interest to individual farmers, associations of farmers, state or local public agencies, and private nonprofit organizations including nonprofit organizations of farmworkers. The loans can be repaid over a period of 33 years. §516 Farm Labor Housing Grants are available today to public agencies or private nonprofit organizations. Grant funds may be used to cover up to 90% of the total cost of the project. §§514-516 loan and grant funds may be used to acquire land; to construct, purchase or repair housing and related facilities; to purchase basic household furnishings; to pay related costs for legal, architectural, or other technical services; and to pay interest which accrues on the loan. In addition, initial operating expenses up to 2% of the development costs can be included in the loan and grant funds.[89]

In Texas, no new labor housing was constructed with FmHA Funds until 1968. Since then, Texas migrant housing providers have made steady use of the §§514-516 Program, especially since the loan

89 ABUSE OF POWER: A CASE STUDY OF THE RURAL HOUSING PROGRAM OF THE FmHA AS ADMINISTERED BY A COUNTY SUPERVISOR IN TWO FLORIDA COUNTIES, Rural Housing Alliance publication, unpaginated (1975).(on file at the Juarez-Lincoln Center, National Migrant Information Clearinghouse Library in Austin, Texas). For further information, see FmHA Instruction 444.4 (Section 514 Farm Lab or Housing Loan Policies, Procedures and Authorizations) and FmHA Instruction 444.6 (Section 516 Farm Lab or Housing Grant Policies, Procedures, and Authorizations). Also see Rural Housing Alliance Handbook #3, Farmer Home Administration Farm Labor Housing Loans and Grants and RHA informational paper, FmHA Farm Labor Housing Program—A Digest of the Regulations. Id.

interest rate was lowered and the grant coverage extended in 1970:

FmHA LABOR HOUSING LOANS AND GRANTS IN TEXAS, 1968-1975[90]

	No.Units	Loans	Grants
1. Castro County, 1968	192	$ 570,000	$ 387,380
2. Hale County, 1969	128	539,890	537,880
3. Sabinal, 1971	40	180,000	176,780
4. Housing Authority of Hidalgo County - Weslaco, 1973	192	162,050	1,458,380
5. Floydada, 1974	48	50,000	450,000
6. Housing Authority of Hidalgo County - McAllen, 1975	150	1,026,110	1,250,000
	750	$2,528,050	$4,260,420

In 1976, the demand for decent labor housing units was so great at Weslaco and McAllen that second loans were taken to construct additional units.[91] The Floydada camp has a second application pending now for 39 more units.[92]

A third FmHA program, §521 Rent Supplements for Rural Rental and Farm Labor Housing, was authorized in 1974. To date, this program has never been funded. It was the position of the Department of Agriculture under the Ford Administration that the same effect could be had by use of HUD's Section 8 rental assistance program. In January of 1977, in Rocky Ford Housing Authority v. United States Department of Agriculture, the U.S. District Court for the District of Columbia

90 GOOD NEIGHBOR COMMISSION 1975 REPORT, supra note 1, at 25.
91 Statement of Mayo Pena of the FmHA at the State Conference on Migrant Affairs, Housing Workshop, February 3, 1977.
92 Id.

ordered to Department of Agriculture to show cause why the §521 program should not be implemented.[93] It seems likely that the Carter Administration will not oppose funding of §521. As a congressman, the new Secretary of Agriculture Bob Bergland stated in 1974 that the enactment of rural rent supplements was "an important authority . . . long overdue."[94]

The Farmers Home Administration has been criticized for its administration of the Farm Labor Housing Program.[95] For years primarily an agency concerned with farmers, the FmHA has been slow to enthusiastically represent migrants as well.[96] Migrant housing advocates, nevertheless, have generally urged reform within the FmHA rather than the creation of a new agency to take its place. The FmHA network of county supervisors across the land—there are 143 in Texas alone—is potentially invaluable in reaching rural areas where the need exists. The First National Conference in Rural America, held in 1975, recommended that FmHA obtain more personnel and give them better training in

93 Housing Assistance Council Information Bulletin, F#2, January 21, 1977.

94 Id.

95 See supra note 89.

96 The 1973 Government Accounting Office study on the impact of federal migrant programs noted earlier reported: "In fiscal years 1966 through 1971, FmHA obligated only about $17 million of the $66 million which it had the authority to obligate for its farm labor housing program under the Housing Act of 1949, as amended, because of the small volume of loan requests from sponsors of new housing projects. Also, during fiscal years 1966 through 1971, FmHA obligated about $15 million of the $19 million of grant funds appropriated to it . . . FmHA county supervisors in the six areas did not have adequate information on the condition of farm labor housing in their counties. They stated that they made little or no effort to promote a community interest to improve farm worker housing and that it was up to the community to seek out FmHA's services. Headquarters officials expressed a similar viewpoint and informed us that no funding action was taken until a sponsor requests funds for a project." GAO REPORT, supra note 13, at 33.

delivering housing and community facilities to low-income persons; they urged resistance to any attempts to transfer FmHA housing functions to HUD where "it would be lost to the urban planners, bankers, and real estate agents."[97]

E. The Texas Migrant Labor Camp Law

Under the present regulations as amended in 1975, all providers of migrant farm labor housing for 3 workers or 2 families for more than 3 days must obtain a license from the Texas Department of Health Resources.[98] Since there is very little single-unit migrant housing in Texas,[99] the requirements of the Code apply to practically all migrant housing in the State. The provisions of the Code are relatively clear and unambiguous.[100] The license is valid for only one year so the camp must be reinspected annually. Failure to comply is a misdemeanor punishable by a fine of not more than $25 or imprisonment for not more than 30 days, or both. Each day in violation is considered a separate offense. In addition, the Department is empowered to seek an injunction to close the camp altogether. The Migrant Camp Inspections Program operates out of the 10 Department of Health regional offices in the state.

97 REPORT ON THE FIRST NATIONAL CONFERENCE ON RURAL AMERICA, TOWARD A PLATFORM FOR RURAL AMERICA, 30 (1975) (on file at the Juarez-Lincoln Center, National Migrant Information Clearinghouse Library in Austin, Texas).

98 TEX.REV.CIV.STAT.ANN. art.5221e-1,§1(Supp.1975).

99 The number of on-farm single units in the entire State of Texas is estimated to be only about a dozen. Interview with Troy Lowry, Sanitation Consultant with the Texas Migrant Camp Inspection Program, in Austin, Texas, November 21, 1976.

100 The exact provisions may be obtained from the Texas Department of Health Resources.

The Inspections Program was unable to begin inspection and licensing until late 1972 because of delays in funding.[101] The initial task was to locate and identify labor camps in the state. Next, each site had to be visited and the law explained. Finally, an inspection took place which usually resulted in either a permanent (one year) or a temporary (not greater than 6 months) license being issued. The Inspection Program concentrated its activities in the High Rolling Plans and Panhandle regions.[102] By August, 1973, 333 camps had been identified, 108 inspections had been made, and 87 temporary or permanent licenses had been issued.[103] In 1975 more camps were brought within the coverage of the Code by amendments to the statute. These smaller camps were scattered across the state and as such made enforcement of the Code that much more difficult. Today, of an estimated 400 camps throughout the state, 171 camps have licenses; only 39 of these are permanent licenses.[104]

The Inspections Program has been extremely lenient with Texas growers, canners, and cotton ginners over the past 5 years. No fines have ever been given and no one has ever gone to jail.[105] Obviously, a certain amount of flexibility is necessary in order to give the

101 GOOD NEIGHBOR COMMISSION 1972 REPORT, supra note 1, Current Developments Chapter, at 15.

102 Id.

103 M. Scanio, Housing and the Migrant Farmworkers (unpaginated) (1973) (unpublished term paper on file at the Juarez-Lincoln Center, National Migrant Information Clearinghouse Library in Austin, Texas).

104 Interview with Troy Lowry, Sanitation Consultant with the Texas Migrant Camp Inspection Program, in Austin, Texas, February 4, 1977.

105 Id.

growers—who are not at all eager to go to the trouble and expense—[106] time to comply. The last thing anybody wants is to force a camp to close when there is a reasonable alternative available. In 1976, however, the Inspections Program served notice that it intended to finally put some teeth in the statute by seeking injunctions against 4 camp operators who had made no good faith attempt to comply. 3 of these suits have since been settled out of court.[107]

There are no reported cases on whether this statute gives rise to an implied right of action by the aggrieved migrants themselves.

F. Other Interested Organizations

The Rural Housing Alliance (RHA) is a national nonprofit federally funded corporation with headquarters in Washington, D. C. RHA works to promote better rural housing in a number of ways. It administers much of the Department of Labor's self-help housing funds which can be used to help migrants build their own homes (home-base housing). It assists other nonprofit organizations and local housing authorities to plan and apply for FmHA loans and grants. RHA publishes pamphlets and information bulletins and lobbies for rural housing legislation.[108] RHA's legal arm was co-counsel for the plaintiffs in the 1974 suit against FmHA to release §§514-516 funds.

106 The cotton ginners until 1975 argued that the Code did not apply to their housing. The 1975 amendments clearly brought cotton gin housing within the coverage of the Code. After 1975, rather than improve the quality of their housing, the ginners began entering into arrangements with cheap, local motels. When the state inspectors begin visiting these motels, it is predicted that the motel owners will call off the arrangements and the ball will be back in the ginners' court. Id.

107 Id.

108 GOOD NEIGHBOR COMMISSION 1975 REPORT, supra note 1, at 24.

The Housing Assistance Council (HAC) is also a national nonprofit federally funded corporation with headquarters in Washington, D.C. HAC also lobbies for rural housing legislation and provides interest free seed money loans for development of rural housing.[109] The information bulletins published by HAC, and by RHA, are invaluable in keeping up with new developments in migrant housing.

In addition to these national organizations, there are smaller housing development corporations operating in states throughout the union. In Texas, the Texas Housing Development Corporation (THDC) is a state wide nonprofit organization providing housing assistance for both urban and rural areas. THDC began operating in late 1976 but has already been involved in a number of projects to improve farm labor housing in the state. THDC partly fills the same need in Texas today for persons with the expertise to actually "package" a FmHA loan/grant application. They also have a revolving fund for seed loans to cover such pre-development costs as architectural fees, engineering fees, and land options.[110]

109 THE RURAL HOUSING COORDINATORS GUIDE, prepared by the Housing Division of the Texas Department of Community Affairs (1976).

110 Interview with Raul Ceniceros of the Texas Housing Development Corporation, in Austin, Texas, February 28, 1977.

PART II

V. WHERE DO WE GO FROM HERE?

"These people travel thousands of miles for the purpose of going to work. I could name other areas where they'd go that far to get out of work. These people aren't like that."

—Richard D. Ramsey, Manager
Migrant Farm Labor Center,
Hope, Arkansas[111]

"Migrant farm work should involve no more suffering than being a travelling salesman."

—Jose Angel Gutierrez[112]

A. The Farm Labor Housing Picture in Texas Today—Some Observations

Migrant labor housing in Texas is located generally in a band stretching from Amarillo south through Lubbock and filling the Rio Grande Valley from the border to the coast. The area of highest concentration is in West Texas around Lubbock, where migrants work the cotton gins. While it is common in other areas of the country to find single unit housing on individual farms (i.e., old farm houses, trailers, etc.), migrants in Texas are usually put up in larger multiple unit labor camps. And since Texas brings in very little

111 DUNBAR & KRAVITZ, supra note 2, at 150
112 Id., at 30.

out of state labor, the migrants who occupy these camps are almost all citizens of Texas.[113]

Texas today has no policy regarding migrant labor housing other than to make bad housing illegal. While this has been a major achievement, it should be apparent that this in itself will not remedy the problem. Immediate enforcement of the Texas Code would close down most camps, a result that would be unfair to the grower and a disservice to the migrants who still need the work with or without housing. Flexible enforcement is the better solution but this will not aid those growers who cannot afford the cost of major improvements by themselves, within a reasonable time. Of the 2 groups enforcing labor housing codes in Texas today—the Federal OSHA and the State Department of Health Resources Migrant Camp Inspection Program—the state agency is doing the more effective job. Its procedure of requiring camp licenses also bypasses the significant 4th Amendment objections to the OSHA procedure.

Although some labor housing in Texas is built without government assistance, the fact that there has been a new FmHA-funded project almost every year since 1968 clearly indicates that there is a need for continued financial assistance in this area. But even if more money were readily available, the process is not as simple as it perhaps sounds. Some grower or some organization must assume responsibility for the loan; most of the new FmHA-funded camps are operated by Local Housing Authorities in order to avoid the substantial property

113 Or Mexican citizens illegally in the State.

taxes that can arise.[114] It must be determined how the loan will be repaid and the maintenance costs met; most new camps rent around 40% of the units to permanent tenants since migrant labor housing is by definition only seasonally occupied, standing empty much of the year.[115] Architectural and engineering plans must be drawn up. Legal assistance is often required. A site must be selected. All of this takes time and requires someone with the expertise to put it all together. Qualified persons who will do this sort of housing development are hard to find in Texas.

Of curious importance is the fact that the demand for migrant laborers in Texas has substantially and steadily declined in the last decade and a half. The demand in Texas today is well under half what it was in 1960; the decline in Texas has been greater than in any other state.[116] As can be seen from the following table, the number of man-months worked by migrants in Texas has declined by 85%:

MAN-MONTHS OF MIGRATORY LABOR[117]

(numbers in thousands)

	1960	1965	1970	1973	% change, 1960-1973
Texas	268	130	63	39	-85
Total U.S.	1,674	1,529	1,181	996	-41

I say curious because of the obvious implication that the need for migrant farm labor housing has declined equally dramatically in the

114 Id.
115 Id.
116 GOOD NEIGHBOR COMMISSION 1971 REPORT, supra note 1, Trends Chapter, at 7.
117 Id., at 3.

last few years. Surely time[118] has extinguished much of the need for labor housing in Texas. Yet we do not know how much; we do not even know how many units there are in Texas today to provide temporary labor housing for migrants.[119] The demand for migrant labor will continue to decline but at some point it will level off.[120] Without the fundamentally important twin statistics of how many units are needed and how many decent units exist any long range plans for improving migrant housing in Texas will be mere shots in the dark.

While it would be an appropriate sign of concern for the state to undertake to ascertain these figures, such action is not likely. Rather, the information will become known as the Migrant Camp Inspection Program works its way across the State. It is estimated by officials in the Program that all of the labor housing units in Texas will have been located within the next three years.[121]

Presently, around 1/4 of the labor housing in Texas has not yet been located by the Inspection Program. Of the camps located only half have licenses. Of the camps with licenses only 1/4 have permanent licenses. What this means is that only about 1/8 of the camps in Texas are currently in full compliance with the law. Of the rest, it must be assumed that a large number have not obtained licenses because their housing still, after 5 years of the Texas Code, does not meet the minimal standards of habitability there set forth. Clearly there is much left to be done.

118 and mechanization.
119 See supra note 9.
120 GOOD NEIGHBOR COMMISSION 1971 REPORT, supra note 1, Trends Chapter, at 3.
121 Interview with Troy Lowry, Sanitation Consultant with the Texas Migrant Camp Inspection Program, in Austin, Texas, February 4, 1977.

B. Proposals

Earlier in the paper it was suggested that the attack on bad migrant housing has had basically two prongs. As to the first prong, in Texas, we already have a labor housing code and it is a good one. As to the second prong, the funding available from FmHA is apparently insufficient; but regarding Texas needs, it is impossible to say by how much.

So much for the theory. The reality is that much (most?) of the migrant labor housing in Texas does not meet the most minimal standard of decency for human habitation. And Texas has shown very little interest in doing anything about it. In the Fall of 1976, the Housing Assistance Council of Washington, D.C. attempted to organize a state-wide conference on migrant housing needs. The conference might have been instructive as to what other states are doing and might have generated new enthusiasm for the task of eliminating bad labor housing in Texas. Unfortunately, the conference never occurred; the plans fell through apparently due to state interdepartmental quibbling. Without displaying too deep a streak of Texas provincialism, I suggest that Texas does not need out of state organizations to remind us of our indebtedness and obligation to help the migrant farmworker. Of all the migrant states, Texas should not wait for others to tell us what to do or how to do it.

The existence of 2 agencies in Texas enforcing 2 labor housing codes is wasteful and unnecessary. Were Texas to draw up and submit

a "state plan" and have that approved by the Department of Labor, we would receive Federal money to pay for up to half the cost of what we are already doing anyway. This extra money could be saved or applied to intensify our existing program.

PROPOSAL: That the Governor's Office for Migrant Affairs (GOMA) and the Good Neighbor Commission investigate this possibility and determine:

a) whether the Department of Labor requires a state plan to include the entire range of OSHA activities; or,

b) whether a state plan will be approved which assumes state responsibility for only selective portions of the Federal Act, i.e., migrant camp inspections.

Either way, GOMA and the Good Neighbor Commission should begin lobbying for the creation of such a plan.

There is a real need in Texas today for persons skilled in farm labor housing development. To date, the Housing Division of the Texas Department of Community Affairs (TDCA) has never directly sponsored any project to construct or rehabilitate labor housing. TDCA must no longer ignore the farmworkers citizens of this State. TDCA's Housing Division should hire and train at least one specialist in migrant labor housing who will have the expertise to organize a community, get a project going and package a proposal to FmHA for funding assitance. His duties might also include specializing in

migrant home-base housing needs, for as more and more migrants "settle out" of the stream the need in this area grows. Migrants cannot be considered just one more group of citizens in the State. Their needs are unique, but all too often invisible to those who do not look. Surely the salary of one State employee is a small price to pay the migrants for their part in the agricultural economy of this State.

PROPOSAL: That TDCA Housing Division hire at least one housing development coordinator trained and specializing in the complexities of migrant farm labor housing.

This TDCA migrant housing specialist should work in conjunction with representatives of the Department of Health Resources Migrant Camp Inspection Program and of the Governor's Office for Migrant Affairs to develop a clear picture of the long range need for migrant housing development in Texas. This long range need should be assessed in light of the number of units existing, the number of these which are substandard, and the number of units which will continue to be used for farm labor housing in the years to come. Specifically, it should be determined whether financial assistance by the state will be required, whether in the form of the "Michigan-plan" proposed in 1975 or under the aegis of a state Housing Finance Agency. As the above information becomes known, the end of bad farm labor housing in Texas should be brought clearly in sight.

PROPOSAL: That the Interagency Task Force on Migrant Labor assume responsibility for 1) developing a long range view of migrant labor housing development needs in Texas and 2) implementing a State goal based thereon.

APPENDIX I

FmHA §§ 514-516 FARM LABOR HOUSING LOANS AND GRANTS,

FISCAL YEARS 1962-1975*

	No. Units		Loans	Grants	Total
	Family	Dormitory			
Prior to FY 1964			$ 273,950	$ -0-	$ 273,950
FY 1964	124	501	884,300	-0-	884,300
FY 1965	6	-0-	47,480	-0-	47,480
FY 1966	789	1,304	3,465,840	2,156,320	5,622,160
FY 1967	707	266	3,818,360	1,789,140	5,607,500
FY 1968	1,173	182	4,494,620	2,700,290	7,194,910
FY 1969	1,092	234	3,530,910	5,003,500	8,534,410
FY 1970	352	122	1,549,260	2,133,770	3,683,030
FY 1971	138	-0-	474,300	736,550	1,210,850
FY 1972	888	77	2,693,080	6,683,180	9,376,260
FY 1973	1,639	97	10,214,260	1,745,930	11,960,190
FY 1974	1,734	17	10,080,000	10,000,000	20,080,000
FY 1975	831	266	8,079,594	5,000,000	13,079,594
TOTALS	9,473	3,066	$49,605,954	$37,948,680	$87,554,634

*J. LINFIELD, FARMWORKER HOUSING AND DEPARTMENT OF LABOR, Table II (1976) (in-house document of the Rural Housing Alliance, Washington, D.C.).